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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

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Emera CNG, LLC	)	**FE Docket No. 13-157-CNG**
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ANSWER OF EMERA CNG, LLC TO THE PROTEST OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to Section 590.304(f) of the Department of Energy's ("DOE") regulations, 10 C.F.R. § 590.304(f) (2014), Emera CNG, LLC ("Emera") hereby submits this Answer to the Motion for Leave to Intervene and Protest ("APGA Protest") filed by the American Public Gas Association ("APGA") in the above-captioned proceeding on September 2, 2014. In support of this Answer, Emera states the following:

I. PROCEDURAL BACKGROUND

Emera is developing a project to export up to 9.125 Bcf per year of domestically produced natural gas as compressed natural gas ("CNG"). Accordingly, Emera filed an application on November 20, 2013, pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. § 717b (2006), and Part 590 of the DOE regulations, 10 C.F.R. § 590, with the DOE Office of Fossil Energy ("DOE/FE") requesting long-term authorization to export CNG to (1) any country with which the United States has, or in the future may enter into, a free trade agreement ("FTA") requiring national treatment for trade in natural gas, and (2) any country with which the United States does not have a FTA requiring national treatment for trade in natural gas and with which trade is not prohibited by United States law or policy ("Application").

DOE/FE gave notice of the non-FTA portion of Emera's Application in the Federal Register on July 3, 2014,[1] and established September 2, 2014, as the deadline for comments on and protests to Emera's Application. The APGA filed its protest on September 2, 2014.

II.
ANSWER TO PROTEST

The APGA Protest largely repeats arguments made by APGA and rejected by DOE/FE in other export application proceedings, most recently in *LNG Development Company, LLC (d/b/a Oregon LNG)*.[2] The APGA Protest also repeats many of its arguments in opposition to the conclusions of the two-part study of the cumulative impacts of LNG exports undertaken by DOE/FE ("2012 LNG Export Study").[3] Despite having been involved in, and having its arguments rejected in, numerous natural gas export proceedings to date, the APGA has not appealed any of those orders. In light of the rebuttable presumption in Section 3(a) of the NGA in favor of approval of applicants to export natural gas, DOE/FE's prior rejection of APGA's arguments and the failure of APGA to put forth the required evidence demonstrating that the requested authorization is inconsistent with the public interest, DOE/FE should grant Emera's request for authorization to export LNG to non-FTA countries.

A. APGA Fails to Meet the Legal Standard Under NGA Section 3(a)

Pursuant to Section 3(a) of the NGA, DOE/FE "shall issue" an order authorizing natural gas exports unless it finds that the proposed exportation "will not be consistent with the public interest." According to DOE/FE, "[Section 3(a) of the NGA] creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an

[1] 79 Fed. Reg. 38017 (July 3, 2014).

[2] *LNG Development Co., LLC (d/b/a Oregon LNG)*, DOE/FE Order No. 3465 (July 31, 2014) ("*Oregon LNG Order*").

[3] *See, e.g., Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 13-04-LNG (May 20, 2013); *Comments of the American Public Gas Association on the NERA-Macroeconomic Impacts of LNG Exports of the United States* (Jan. 24, 2013).

application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest."[4] DOE/FE looks to the evidence developed in the record of each application proceeding to make its determination.[5]

APGA has failed to overcome the statutory presumption in favor of applications to export natural gas. Furthermore, as detailed below, APGA raised primarily the same arguments in their comments on the 2012 LNG Export Study and multiple other natural gas export proceedings, and DOE/FE rejected these arguments, most recently in the *Oregon LNG Order*. APGA also presents two new arguments: that newer data available from the EIA shows greater domestic demand for natural gas and that DOE/FE should cease processing applications to export natural gas until the updated EIA study based on data from the Annual Energy Outlook 2014 is completed.[6] Neither of these arguments suffices to overcome the statutory presumption either.

In its Application, Emera cited United States government data, government studies and publicly available third-party studies, and put forth a substantial analysis of the public interest factors weighing in favor of DOE/FE's approval of Emera's proposed exports. The 2012 LNG Export Study, the most comprehensive analysis of natural gas exports to date, similarly supports approval of Emera's proposal. As they did in numerous other LNG export proceedings, APGA has alleged a variety of generalized economic, environmental and social harms due to natural gas

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4 *Oregon LNG* at 6; *see also Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282 at 5-6 (May 17, 2013) ("*Freeport Order*");; *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 28 ("*Sabine Pass Order*"); *see also Panhandle Producers and Royalty Owners Assoc. v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) ("A presumption favoring import authorization, then, is completely consistent with, if not mandated by, the statutory directive."); *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 1473 (April 2, 1999) ("Section 3 creates a statutory presumption in favor of approval of an export application and the Department must grant the requested export [application] unless it determines the presumption is overcome by evidence in the record of the proceeding that the proposed export will not be consistent with the public interest.").

5 *Freeport Order* at 7.

6 EIA, *Annual Energy Outlook 2014* at MT-22 (April 2014), *available at* http://www.eia.gov/forecasts/aeo/pdf/0383(2014).pdf ("AEO2014).

exports without any significant arguments against Emera's Application in particular.[7] After careful consideration of these general arguments, DOE/FE determined in the *Oregon LNG Order* that "the United States will experience net economic benefits from issuance of authorizations to export domestically produced LNG" and that "potential negative impacts of . . . proposed exports are outweighed by the likely net economic benefits and by other non-economic or indirect benefits."[8] The *Freeport Order* and others included similar conclusions.[9] APGA has failed to distinguish this proceeding or the evidence presented by Emera from the Oregon LNG and other proceedings, and APGA has failed to account for the orders of magnitude difference between the proposed exports by Emera and by other, large LNG terminals. Thus, APGA has not shown why DOE/FE should reverse course in this proceeding. DOE/FE should once again find that the APGA arguments in opposition to the Application fail to overcome the statutory presumption in favor of granting the requested export authorization.

B. Emera's Proposed Exports Are De Minimis and Primarily for its Own Use

Emera proposes to export up to 9.125 Bcf per year (0.025 Bcf per day) of natural gas, which is approximately 0.4% of the low-end level of exports considered in the 2012 LNG Export Study and 0.2% of the high-end level of exports considered. This level of exports is less than 0.3% of the natural gas exports predicted in 2025 according to the AEO2014 Reference Case.[10] Emera's proposed export level is orders of magnitude smaller than an LNG export terminal, such as Oregon LNG, which recently received conditional authorization to export 456.25 Bcf per year.[11] Compared to the scale of other natural gas exports approved by DOE/FE, Emera

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7 As discussed below, the quantity of natural gas Emera proposes to export is *de minimis* compared to other export applications and the U.S. natural gas industry as a whole. Many of APGA's arguments are not applicable to a project of such limited scope.

8 *Oregon LNG Order* at 140; *see also Lake Charles Order* at 123-24.

9 *Freeport Order* at 110.

10 AEO2014 at CP-10.

11 *Oregon LNG Order* at 1.

constitutes a *de minimis* amount. Because Emera's proposed exports are so minimal, the resulting effects claimed by APGA (primarily increased natural gas prices) could not result from such exports. Thus, APGA's protest, which recycles arguments made against other, larger exporters, is irrelevant to Emera.

The bulk of the natural gas exported by Emera will be used by Grand Bahama Power Company ("GBPC"), which is an affiliate of Emera, to operate its electric generation facilities on the island of Grand Bahama. Gas not needed by GBPC for operations will be available to other natural gas users on Grand Bahama and potentially elsewhere in the Caribbean. Due to the limited demand for natural gas on Grand Bahama, construction of a large-scale LNG terminal capable of receiving cargoes from other LNG-producing nations such as Qatar and Australia is not feasible for GBPC. Moreover, CNG produced by Emera's facility will not be available for trading on the world market (outside of the Caribbean region) and cannot contribute to a convergence of U.S. and foreign gas prices.[12] APGA's fundamental misunderstanding of Emera's project and its purpose is reflected in APGA's assertion that Emera's plan will not be economically viable once foreign alternatives reduce price arbitrage opportunities.[13] Therefore, DOE/FE should reject APGA's protest and approve Emera's application without delay.

C. DOE/FE Previously Considered and Rejected the Majority of APGA's Arguments

In every LNG export proceeding where APGA has been a party, DOE/FE has rejected its arguments opposing exports. In its protest, APGA repeats the standard theme that natural gas exports will lead to an increase in domestic natural gas prices which is inherently inconsistent with the public interest and will overly burden domestic consumers, including industrial

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[12] *See,* APGA Protest at 16-19.
[13] APGA Protest at 6.

consumers, of natural gas. DOE/FE has consistently, most recently in the *Oregon LNG Order*, rejected these arguments following careful study of the issues.

APGA claims that prices will rise because exports create greater demand for domestically produced natural gas and that exports will drive the convergence of prices in the United States natural gas market with international markets for natural gas.[14] APGA pins these economic arguments on the assertion that the effects of these higher gas prices will outweigh the benefits of LNG exports under the public interest analysis.

The 2012 LNG Export Study disproves these assertions. The first part of the study, conducted by the Energy Information Administration ("EIA"), looked at the potential impacts of natural gas exports on energy prices, production, and consumption under several export scenarios ("EIA Study"). The second part of the study, conducted by NERA Economic Consulting, assessed the macroeconomic impacts of natural gas exports using its proprietary model and the results of the EIA Study ("NERA Study"). When analyzing the price impacts of LNG exports, the NERA Study concluded that the highest price impact under any scenario would be a natural gas price $1.11 above the reference case with no LNG exports, while most scenarios saw much lower potential price increases.[15] In only three scenarios did the difference from the baseline exceed $1.00, and in seven of the scenarios, the price difference was never over $0.50.[16] Moreover, the increased reserve development and infrastructure investment that will occur in response to LNG exports will help to protect against natural gas price volatility by allowing alternative supply sources or paths should severe weather or a natural disaster cause an imbalance in domestic supply and demand.

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14 APGA Protest at 7.
15 NERA Study at Figure 29.
16 *Id.*

DOE/FE has also rejected claims that LNG exports would cause domestic and international natural gas prices to converge. The NERA Study determined that U.S. prices will always be lower than international prices in any scenario where LNG exports will occur.[17] In the *Oregon LNG Order*, DOE/FE notes that in "a competitive market . . U.S. natural gas prices would be lower than international LNG prices" even as U.S.-sourced LNG exports "exert downward pressure" on higher-priced LNG in foreign markets.[18]

Consistent with the minimal impact LNG exports will have on natural gas prices, the NERA Study found that the U.S. would experience net economic benefits from natural gas exports, with the level of benefits increasing as the quantity of exports increases.[19] While exports would cause some increases in natural gas prices, price increases were limited based on conditions both within the U.S. and in the broader global market.[20] Most importantly, the 2012 LNG Export Study concludes that "the United States will experience net economic benefits from issuance of authorizations to export domestically produced LNG."[21] After taking comments on the 2012 LNG Export Study, DOE/FE determined that the study is "fundamentally sound" and supports natural gas exports.[22]

C. Newer AEO Data Does Not Undermine DOE/FE's Conclusions

APGA's references to newer AEO2014 data do not suffice to rebut the presumption in favor of natural gas exports and other evidence supporting exports. APGA cites increased natural gas demand projections in the AEO2014 reference case compared to prior years, and APGA also claims the demand projections may understate demand.[23] One factor APGA neglects

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17 *Oregon LNG Order* at 123.
18 *Id.* at 124.
19 NERA Study at 40.
20 *Id.* at 41.
21 *Oregon LNG Order* at 137; *Freeport Order* at 110.
22 *Id*.
23 APGA Protest at 9.

to cite, however, is that the EIA predicts that natural gas production levels will more than offset increased U.S. consumption. The AEO2014 Reference Case predicts average natural gas demand growth of 0.8% per year from 2012 to 2040 compared to 1.6% average annual production growth.[24] The EIA thus concludes that "growth in production meets increasing demand and exports, while also making up for a drop in natural gas imports."[25] This increased production estimate, in turn, "supports an increase in U.S. exports of LNG and pipeline gas."[26] Increased natural gas production also drives a decrease in the 2035 projected natural gas price in the Reference Case from AEO2014 compared to AEO2011.[27] DOE/FE noted this in the *Oregon LNG Order* when it concluded that "[t]he implication of the latest EIA projections is that a greater quantity of natural gas is projected to be available at a lower cost than estimated just three years ago."[28]

A tremendous number of factors influence U.S. natural gas production, demand, pricing, and export possibilities. To single out one piece of data from the AEO2014 Reference Case, as APGA has done, is misleading if not viewed within the context of the remaining data. That domestic industrial demand will increase between 2012 and 2025 is not sufficient to rebut the presumption in favor of natural gas exports, particularly in light of the increased production projections and projection of lower gas prices at certain points in the future. Thus, the first of APGA's new arguments should be rejected.

D. DOE/FE Need Not Wait for EIA's Updated Study

DOE/FE's request that EIA update the export scenarios that formed part of the 2012 LNG Export Study does not necessitate a moratorium on export authorizations. On May 29, 2014,

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24 AEO2014 at MT-22.
25 *Id.*
26 *Id.* at M-24.
27 *Oregon LNG Order* at 104.
28 *Id.*

DOE/FE asked the EIA to update its prior study and consider new export scenarios based on greater volumes of exports. APGA contends that DOE/FE should pause its processing of non-FTA export applications until the update is complete. Such a pause is unnecessary both for all non-FTA export applications and for Emera's application specifically.

With respect to all export applications, no party has provided sufficient evidence to undermine the conclusion of the 2012 LNG Export Study that natural gas exports provide benefits to the U.S. at all levels of exports. Moreover, as discussed above, the AEO2014 projects increased domestic natural gas production and lower natural gas prices, at times, than AEO2011, which was used in the 2012 LNG Export Study. Based on this information, it is reasonable to expect any future EIA study to continue to support natural gas exports, or, at the very least, there is no sufficient basis to expect otherwise that overcomes the rebuttable presumption in favor of exports.

With respect to Emera's Application, DOE/FE need not wait for the updated EIA report due to the *de minimis* quantities of natural gas proposed for export. As discussed above, Emera's proposed exports are orders of magnitude smaller than a coastal liquefaction and export terminal, which means the proposed exports will have no noticeable effect on the U.S. natural gas industry. Thus, even if DOE/FE were to pause processing export applications while the EIA prepares the updated study, there is no need to delay Emera's application.

III.
CONCLUSION

For the foregoing reasons, Emera CNG, LLC respectfully requests that DOE/FE reject the arguments set forth in the APGA Protest and find that granting the authorization requested in the Application to enable Emera to export domestically produced CNG to any country with which trade is not prohibited by U.S. law or policy is not inconsistent with the public interest.

Respectfully submitted,

/s/ John S. Decker
John S. Decker
Christopher J. Terhune
Vinson & Elkins L.L.P.
Attorneys for Emera CNG, LLC

Dated: September 17, 2014

Appendix A

VERIFICATION

District of Columbia)

BEFORE ME, the undersigned authority, on this day personally appeared John S. Decker, who, having been by me first duly sworn, on oath says that he is an Attorney for Emera CNG, LLC, and is duly authorized to make this Verification on behalf of Emera CNG, LLC; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

John S. Decker

SWORN TO AND SUBSCRIBED before me on the 17th day of September, 2014.

Name: SANJAY SHUKLA
Title: Notary Public

My Commission expires:

NOVEMBER 30th 2016

SANJAY SHUKLA NOTARY PUBLIC EXPIRES NOV 30, 2016 DISTRICT OF COLUMBIA

District of Columbia: SS

Subscribed and sworn to before me, in my presence,

this 17th day of September, 2014

by John Decker

Sanjay Shukla, Notary Public

My Commission Expires November 30th, 2016

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 17th day of September, 2014.

/s/ Christopher J. Terhune
Christopher J. Terhune